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APPLICATION NO. 00/942,062	FILING DATE 10/02/97	FIRST NAMED INVENTOR CHEN	ATTORNEY DOCKET NO. 22/210
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EXAMINER

MORAN, M

ART. UNIT

PAPER NUMBER

1000

DATE MAILED: 07/02/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

## Interview Summary

Application No.

08/942,369

Applicant(s)

Chen et al

Examiner

Marjorie Moran

Group Art Unit

1623



All participants (applicant, applicant's representative, PTO personnel):

(1) Marjorie Moran(3) Richard SanPietro(2) Kathleen Fonda

(4) \_\_\_\_\_

Date of Interview Jun 30, 1999Type: ☒ Telephonic ☐ Personal (copy is given to ☐ applicant ☐ applicant's representative).Exhibit shown or demonstration conducted: ☐ Yes ☒ No. If yes, brief description:Agreement ☐ was reached. ☒ was not reached.Claim(s) discussed: 20-26

Identification of prior art discussed:

JOHNSON (F), and GIBSON (C)

Description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Examiner Moran admitted that JOHNSON's teaching that "a specific microorganism will live and propagate on the culture medium" is ambiguous, but maintained that JOHNSON does suggest a medium specific to urinary pathogens. Mr. San Pietro argued that JOHNSON teaches a medium selective for only a single microorganism, not for a group of microorganisms, and therefore does not teach a uropathogenic medium as defined on p. 12 of the specification. The attorney pointed out that a medium specific to a single microorganism is taught by GIBSON, but that a medium specific for a group, for example gram-negative organisms, is not taught by the prior art of record. The examiner indicated that any new arguments (e.g. enablement regarding the medium of JOHNSON) would be considered if presented in another after-final response. Examiner Moran pointed out that claim 25 recites gram positive bacteria. Mr. SanPietro said that another after-final response with further arguments would be filed. See attached outline of arguments.

(A fuller description, if necessary, and a copy of the amendments, if available, which the examiner agreed would render the claims allowable must be attached. Also, where no copy of the amendments which would render the claims allowable is available, a summary thereof must be attached.)

1. ☒ It is not necessary for applicant to provide a separate record of the substance of the interview.

Unless the paragraph above has been checked to indicate to the contrary, A FORMAL WRITTEN RESPONSE TO THE LAST OFFICE ACTION IS NOT WAIVED AND MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a response to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW.

2. ☐ Since the Examiner's interview summary above (including any attachments) reflects a complete response to each of the objections, rejections and requirements that may be present in the last Office action, and since the claims are now allowable, this completed form is considered to fulfill the response requirements of the last Office action. Applicant is not relieved from providing a separate record of the interview unless box 1 above is also checked.

*See also attached supplemental Form 892, a statement of relevance, and US patent 4,925,789.*

Examiner Note: You must sign and stamp this form unless it is an attachment to a signed Office action.

*Kathleen K. Fonda*  
KATHLEEN K. FONDA  
PRIMARY EXAMINER

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JUN 29 1999

**GROUP 1600****FACSIMILE TRANSMITTAL FORM**

<b>To:</b> Examiner Marjorie Moran	<b>Fax Number:</b> 703-308-4556	<b>Phone Number:</b>
<b>From:</b> Richard San Pietro	<b>Fax Number:</b> 858-552-0159	<b>Phone Number:</b> 858-552-8400 X5578
<b>Re:</b>	<b>Date/Time sent:</b> 6/28/99 7:04 PM	<b>No. of Pages:</b> 4 (incl. cover)
<b>Client Name:</b> IDEXX Laboratories, Inc.	<b>Client Matter No.:</b> 226/213	

If you do not receive all of the pages, please call Richard San Pietro at (858) 552-8400, extension 5578.

**Notes/Comments:**

PLEASE DELIVER IMMEDIATELY AND  
DIRECTLY TO EXAMINER MORAN

(Points for Interview of June 30<sup>th</sup>)

50-120658-1 TO BE COMPLETED BY FAX OPERATOR

TIME TRANSMITTED: \_\_\_\_\_ TRANSMITTED BY: \_\_\_\_\_

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Claim Language	Language of Specification	Johnson Reference
<p>20. A method of detecting the presence of urinary pathogens in a biological sample and of simultaneously determining the susceptibility of the urinary pathogens to antimicrobial agents, said method comprising:</p> <p>providing a multicompartiment assay device comprising:</p> <p>at least one compartment comprising a medium capable of sustaining growth of total microbial organisms; at least one compartment comprising a uropathogenic specific medium; and at least one compartment comprising an antimicrobial susceptibility interpretation medium;</p>	<p>Table I at page 19 teaches the specific ingredients of a <b>uropathogenic specific medium</b>, as recited in the claim.</p> <p>"Uropathogenic specific medium" or "UTI medium" refer to a medium which allows only the growth of the primary urinary gram negative pathogens and allows substantially less growth of any other bacteria of a biological matrix." Page 12, line 11 et seq.</p> <p>By "primary gram negative urinary pathogens" is meant the group of bacteria which cause at least 85-90% of the human and veterinary urinary tract infections. These include but are not limited to: <i>Escherichia coli</i>, <i>Klebsiella spp.</i>, <i>Enterobacter spp.</i>, and <i>Proteus mirabilis</i>. Page 10, line 19 et seq.</p>	<p>Johnson completely fails to teach or suggest the composition of a "<b>uropathogenic specific medium</b>," as that term is defined at page 12 of the specification as a medium which allows for the growth of the primary gram negative urinary pathogens and allows for substantially less growth of any other bacteria in a biological matrix.</p> <p>Johnson suggests only the concept of a media which selects for a <u>single organism</u>, NOT a medium which selects for <u>any one or more of the primary gram negative urinary pathogens</u>, as that term is defined at page 10 of the specification. Johnson states "Only a <u>specific microorganism</u> [note singular] will live and propagate in the culture medium..." (Col. 6, lines 55-56). "The culture medium must be rehydrated before it is capable of promoting growth of <u>the specific microorganism</u>..." [note singular]. (Col. 7, lines 7-9).</p> <p>Claim 14 of Johnson also suggests only a medium selective for a <u>specific microorganism</u> [note singular], and not a whole group of organisms as in the present invention. Claim 14 recites "...said culture medium favoring <u>the specific microorganism</u>..." [note singular]</p>

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<p>The background section of Johnson shows he considers his contribution to the art to be a superior device, and not a new method or medium. There are no media in the art which select for primary gram negative urinary pathogens, as that term is defined at page 10 of the specification of the present invention.</p>		
<p>See above</p>	<p>See above</p>	<p>placing a portion of the biological sample respectively in said at least one compartment comprising a medium capable of sustaining growth of total microbial organisms; said at least one compartment comprising a <b>uropathogenic specific medium</b>; and, said at least one compartment comprising an antimicrobial susceptibility interpretation medium comprising an antimicrobial agent;</p>
<p>See above</p>	<p>See above</p>	<p>whereby growth of organisms in said at least one compartment comprising a medium capable of sustaining growth of total microbial organisms indicates the presence of microbial organisms in the sample; growth of organisms in said at least one compartment comprising a <b>uropathogenic specific medium</b> indicates the presence of urinary pathogens in the sample, and growth of organisms in said at least one compartment comprising an antimicrobial susceptibility interpretation medium indicates that the organisms lack susceptibility to the antimicrobial agent comprised in said</p>

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antimicrobial susceptibility interpretation medium; and		
examining the compartments to determine the presence of <b>urinary pathogens</b> in said biological sample and the susceptibility of said urinary pathogens to said antimicrobial agents.	See above.	See above. The media suggested by Johnson would be capable of selecting for <u>only a single</u> <u>microorganism</u> , not "urinary pathogens," in a plural sense, as recited in the present claims.

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Art Unit: 1623

Supplement to Interview Summary of June 30, 1999

The prior art made of record and which is considered pertinent to applicant's disclosure is EDBERG (G). This reference is being supplied to show that a medium selective for gram negative bacteria was known in the prior art at the time of invention, as were methods of using such a medium for detection of microorganisms. Please note especially col. 6, lines 41-62.